IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WA.No. 1326 of 2007()

AGAINST THE JUDGEMENT IN OP.4746/2003 Dated 20/11/2006

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APPELLANTS/ PETITIONERS IN THE OP:
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1. SURESH KUMAR,
   MUTTATHU VELIL VEEDU, EZHUKONE P.O.,
   KOTTARAKKARA, KOLLAM.

2. ANIL KUMAR,
   PARANKIMAMVILA VEEDU, EZHUKONE P.O.,
   KOTTARAKKARA, KOLLAM.

   BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS/RESPONDENTS IN THE OP:
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1. THE DISTRICT COLLECTOR, KOLLAM.

2. THE ASSISTANT EXCISE COMMISSIONER,
   KOLLAM.

3. THE DEPUTY TAHSILDAR (R.R),
   TALUK OFFICE, KOTTARAKKARA.

   BY SR. GOVERNMENT PLEADER SHRI M.R. SABU.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1326 OF 2007

Dated this the 26th June, 2007

JUDGMENT

K.T.SANKARAN,J.

An ambassador car, bearing Registration No.KL2/A 8375, belonging to the second petitioner, was seized by the Excise Officials on 23.12.1996. Certain quantity of arrack was found in the vehicle. By order dated 15.2.1997, the second respondent ordered release of the car on certain conditions. Challenging that order the second appellant filed O.P.No.9473 of 1997, which was disposed of by Ext.P1 judgment dated 5th June, 1997. Pursuant to Ext.P1 judgment, the vehicle was released to the second appellant on 29.8.1997, on executing the required bonds and on furnishing sufficient security as directed by this Court. Thereafter, confiscation proceedings continued. In spite of notice, the vehicle was not produced by the second appellant before the authorities. Finally, on 22.3.2000 confiscation order was passed under Section 67B of the Abkari Act, which was served on the appellants on 8.4.2000. On 26.7.2000, the Excise Commissioner ordered sale of the car, but the car could not be traced. On the basis of the security

offered, revenue recovery proceedings were initiated. Appellants challenge the revenue recovery proceedings on the ground that subsequent to the order of confiscation, the second appellant and the other accused were acquitted on 31.12.2001.

2. The learned single Judge did not accept the contention of the appellants/petitioners on the ground that a subsequent order of acquittal in the criminal case would not nullify the order of confiscation. It was also noticed by the learned single Judge that an order under Section 67B of the Act is appealable under Section 67E. By virtue of Section 67H of the Act, confiscated property shall vest in the Government. Government is not a party to the proceedings.

3. Learned counsel for the appellants would submit that the view taken by the learned single Judge that subsequent acquittal is not a ground for release of the vehicle is correct. He submits that the vehicle is now seized by the Excise Officers and that vehicle can be sold and only the balance need be recovered. Learned Government Pleader submitted that as a first step, the vehicle can be sold and only the balance need be recovered from the appellants by recourse to sale of the property offered as security or otherwise.

Considering the submission made by the appellants as well as the learned Senior Government Pleader, we dispose of the Writ Appeal with the following directions:

i) The vehicle in question shall be sold first for realisation of the amount covered by the security offered by the appellants.

ii) If full amount offered as security is not realised by sale of the car, the respondents are free to realise the amount from the petitioners by resorting to revenue recovery proceedings.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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